
Costs Decisions

by J A Murray LLB (Hons), Dip. Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 4 January 2023

**Costs application 1 in relation to Appeal Ref: APP/R1038/C/21/3288613
Land at Brindwood House, Millthorpe Lane, Holmesfield, Derbyshire**

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by North East Derbyshire District Council for a partial award of costs against Mr Robert Hadfield.
 - The inquiry was in connection with an appeal against an enforcement notice alleging, without planning permission, the material change of use of a building to use as a single dwellinghouse.
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**Costs application 2 in relation to Appeal Ref: APP/R1038/C/21/3288771
Land at Brindwood House, Millthorpe Lane, Holmesfield, Derbyshire**

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by North East Derbyshire District Council for a partial award of costs against Mr Robert Hadfield.
 - The inquiry was in connection with an appeal against an enforcement notice alleging, without planning permission, the erection of 2 buildings.
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Decisions

1. Applications 1 and 2 for awards of costs are allowed in the terms set out below

Procedural and preliminary matters

2. The Planning Practice Guidance (PPG) indicates that, where an appeal is withdrawn, any costs application in relation to it should be made to and determined by the Planning Inspectorate's Costs and Decisions team. However, in this case, the applications in relation to appeals ref 3288613 (appeal A) and 3288771 (appeal B) are inextricably linked. The substantive appeals were linked, but it was only appeal A which necessitated the inquiry procedure. I will therefore determine both applications, notwithstanding the withdrawal of appeal A.
3. The costs application and costs response were submitted in writing but read out before the close of the inquiry on 2 December 2022. I have taken account of the full content of the submissions.
4. The PPG indicates that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

Reasons

5. In costs application 1, concerning appeal A, the Council (the applicant) contends that there was no good reason for the withdrawal of the appeal, immediately before the inquiry resumed at 10:00 am on 1 December 2022, and furthermore, there was no reasonable prospect of that appeal succeeding. Nevertheless, the Council only seeks a partial award. Aside from the claimed weakness in the appellant's (the respondent) case on ground (d), the Council says the respondent's lack of engagement in the several months before the inquiry opened virtually on 6 September 2022, was unreasonable.
6. That lack of engagement was due to the personal circumstances of the respondent's agent, his wife having been diagnosed as very seriously ill in January 2022. I understand and accept his explanation that this situation dominated his time, energy, and thoughts for several months, such that he was unable to attend to these appeals, or even properly advise the respondent.
7. For this reason, the respondent was not ready to proceed when the inquiry opened on 6 September 2022, and I granted his request for an adjournment after opening. I had refused his request for postponement, which was only made on 31 August 2022, partly in view of the applicant's objection, but also because I wanted to ensure a resumption date was agreed and saw an opportunity for some 'case management.' However, I agreed to the inquiry opening virtually, rather than face to face. This minimised costs and inconvenience, though both parties wanted the substance of the appeals to be addressed at a face to face inquiry.
8. When granting the adjournment on 6 September, I gave 'directions', and the respondent's agent was clearly aware of the potential costs' implications of the adjournment. The lack of engagement and the request for a postponement or adjournment could normally constitute unreasonable behaviour. Nevertheless, the PPG makes clear that I have a discretion when deciding an award, and I can take account of extenuating circumstances. Given the agent's extremely challenging personal situation, I am satisfied that the lack of engagement and the request for an adjournment did not constitute unreasonable behaviour justifying an award of costs.
9. However, the respondent did engage in the appeal process after 6 September, including complying with my directions by submitting a proof of evidence by 4 October 2022. In doing so, the respondent will have considered the applicant's proof of evidence submitted in early August.
10. Nevertheless, appeal A was only withdrawn when the inquiry resumed on 1 December 2022. The stated reason for withdrawal is that the latest occupier of the appeal premises, who it transpires was the daughter of the respondent's partner, had elected to move in with her romantic partner, and was no longer in the house. That was not a good or comprehensible reason for withdrawing an appeal which sought to establish that the use of the appeal building as a separate dwelling had become lawful through the passage of time. Establishing that would have been of significant benefit to the respondent, regardless of the needs of the latest occupant.
11. Having regard to the PPG, I am satisfied that this last minute withdrawal of appeal A constituted unreasonable behaviour. Without a better explanation, I am driven to conclude that, having had the applicant's proof of evidence since

- early August, the respondent decided his own evidence would not withstand scrutiny and appeal A had no realistic prospect of success.
12. Notwithstanding the extenuating circumstances of the respondent's agent and his consequent lack of engagement up to 6 September 2022, the weakness in the respondent's case should have been apparent soon thereafter, and well before 1 December 2022. I am satisfied the respondent's behaviour caused the applicant to waste expense in addressing appeal A, after 6 September 2022, and this included preparing and submitting a rebuttal proof on 2 November. On that basis, a partial award of costs is justified on application 1.
 13. Turning to application 2, ground (c) was withdrawn on 4 October 2022. The email confirming withdrawal indicated this was on the basis that the appeal buildings are situated in front of the principal elevation of Brindwood House. This was always the case, but it had previously been contended they were within the curtilage of, and incidental to, Brindwood Lodge. I never had to address that argument as ground (c) was withdrawn, and it would have been bound to fail when appeal A was abandoned, as this was how the status of Brindwood Lodge as a separate dwelling, with its own curtilage, was to be established.
 14. Regardless of the principal elevation and curtilage points, there was also the difficulty of the size limitations in Class E, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015. However, notwithstanding the difficulties for the respondent's case posed by the government's guidance in 'Permitted development rights for householders - Technical Guidance', and the judgment in *Burford v Secretary of State for Communities and Local Government* [2017] EWHC 1493, it had featured an argument about how height should be measured. I never had to address that, as ground (c) was withdrawn.
 15. The respondent says, in light of reasons set out by opposing parties, it was concluded that ground (c) was not likely to succeed. However, despite the various obstacles, it is difficult to conclude that the respondent should have realised this ground *never* had any realistic prospect of success. Nevertheless, following the submission of the Council's proof in early August, and the re-engagement with the appeal by the respondent's agent just before 6 September 2022, ground (c) could and should have been withdrawn without delay. The failure to do so until 4 October 2022 was unreasonable.
 16. Whilst the applicant knew of the withdrawal of ground (c) before submitting its rebuttal proof on 2 November 2022, it says it had been obliged to invest further time in considering whether the buildings might benefit from permitted development rights. That involved wasted expense and again a partial award is justified to cover expense incurred in relation to ground (c) after 6 September 2022.
 17. The applicant also contends that the respondent's case on ground (a) had no reasonable prospects of success. I was not persuaded by the respondent's case on ground (a). Nevertheless, that involved an exercise of judgment concerning the weight to be attached to a fallback position, based on permitted development rights, and the comparative impact of open parking on both the openness of the Green Belt and the character and appearance of the landscape. It was not unreasonable of the appellant to pursue those arguments, even though I found them unconvincing.

18. These appeals were determined through the inquiry procedure because appeal A was made on ground (d), and it was necessary to test factual evidence through formal cross-examination under oath. I have found that it was unreasonable not to withdraw appeal A sooner, and I am awarding costs in relation to that appeal from 6 September 2022. Had that withdrawal taken place earlier, the resumption of the inquiry on 1 December could have been avoided, as appeal B could have been determined on written representations, albeit that a site visit would have been required.
19. Withdrawal on the 1 December, when the representatives and counsel were already in attendance, meant it was sensible for me to continue with the inquiry, albeit based on a 'round table' discussion and closing submissions. Aborting the inquiry to proceed on written representations would have necessitated providing an opportunity for final written comments, further delaying the process. Whilst there was a suggestion from the respondent that closing submissions and costs might be dealt with by a later written exchange, that would also have led to further delay, and no one suggested determining the merits of appeal B on written evidence alone. Nevertheless, the unreasonable late withdrawal of appeal A meant that the costs of attendance at and hosting the inquiry on 1 and 2 December were incurred unnecessarily, and this also justifies a partial award of costs.
20. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified on both applications 1 and 2.

Costs Order

21. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Robert Hadfield shall pay to North East Derbyshire District Council, the costs of:
- (i) the appeal proceedings Ref APP/R1038/C/21/3288613 described in the heading of this decision limited to those costs incurred after 6 September 2022; and
 - (ii) the appeal proceedings Ref APP/R1038/C/21/3288771 described in the heading of this decision limited to those costs incurred after 6 September 2022 in addressing ground (c), and the costs of attending and hosting the inquiry on 1 and 2 December 2022.
- such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Mr Robert Hadfield, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

JA Murray

INSPECTOR